

Message Text

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C O N F I D E N T I A L SANTIAGO 2282

EO 11652: GDS

TAGS: CI, PINS, PGOV

SUBJECT: SUPREME COURT REVIEW OF MILITARY TRIALS

REF: SANTIAGO 1508

1. JAIME GUZMAN, CONSERVATIVE INTELLECTUAL AND PRIME MOVER OF THE GREMIO MOVEMENT, MEMBER OF THE JUNTA'S CONSTITUTIONAL DRAFTING COMMISSION, AND INTIMATE OF JUNTA MEMBER GENERAL LEIGH, TOLD EMBOFFS AT AMBASSADOR'S LUNCHEON APRIL 26 THAT HE HAS BEEN DISCUSSING SERIOUSLY WITH LEIGH IDEA OF ISSUANCE OF DECREE LAW PERMITTING APPEAL FROM VERDICTS OF MILITARY COURTS TO SUPREME COURT DURING "STATE OF WAR" AS WELL AS "STATE OF PEACE." THIS WOULD HAVE FAVORABLE IMPACT ON BOTH CHILEAN AND FOREIGN OPINION, GUZMAN SAID, BUT PRIME RATIONALE WOULD BE MORAL IMPORTANCE OF ADDED PROTECTION FOR ACCUSED.

2. THERE ARE, HOWEVER, IN GUZMAN'S OPINION, CERTAIN DIS-ADVANTAGES IN TAMPERING WITH EXISTING LEGAL ORDER. JUNTA IS RELUCTANT GOVT, AND PREFERS TO SEE ITSELF AND BE SEEN BY WORLD OPINION AS FREE TO ACT ONLY WITHIN RESTRAINTS OF INHERITED LEGAL ORDER. ALTHOUGH PARTICULAR MOVE PROPOSED WOULD BE GENERALLY APPLAUDED, IT SETS PRECEDENT OF JUNTA-IMPOSED CHANGE IN LEGAL ORDER AND WOULD RAISE CONCERN THAT JUNTA CAN AS EASILY CHANGE OTHER ASPECTS OF RELATION WITH JUDICIARY WHICH IT BEING CAREFUL TO PRESERVE.

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3. NOT CLEAR FROM CONVERSATION WHETHER PROPOSAL HAS BEEN DISCUSSED WITH REST OF JUNTA OR ONLY WITH LEIGH.

4. COMMENT. GUZMAN DID NOT RAISE ANOTHER ASPECT OF THIS INTERESTING IDEA, WHICH IS REACTION OF SUPREME COURT IF ASKED OR REQUIRED TO TAKE AN APPEAL FUNCTION. COURT HAS BEEN QUITE CONTENT TO KEEP CLEAR OF WHOLE BUSINESS OF INVOLVEMENT WITH MILITARY JUSTICE SYSTEM "IN TIME OF WAR" (SEE REFTEL).

5. WERE IT NOW TO BECOME INVOLVED, COURT WOULD NOT IN OUR OPINION BE RUBBER STAMP. IT MIGHT IN SPECIFIC CASES BE FORCED INTO LEGAL POSITIONS AT ODDS WITH THOSE OF GOC. FACT THAT SO PROMINENT A RIGHT-WING SUPPORTER OF GOVERNMENT IS ADVOCATING A MOVE WHICH WOULD MAKE THIS SITUATION POSSIBLE IS AN INTERESTING INDICATION THAT PRESSURE OF OUTSIDE OPINION (AND CONCEALED CHILEAN OPINION) MAY BE HAVING AN EFFECT ON GOVERNMENT. WE WOULD NOT AT THIS STAGE REGARD PROSPECTS FOR SUCCESS OF GUZMAN IDEA AS VERY HIGH, BUT WE THINK THE DISCUSSION ITSELF IS SIGNIFICANT.
POPPER

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